

**Introduced by Senator Padilla**

February 7, 2007

---

An act to add Section 1771.11 to the Labor Code, relating to public works.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 191, as introduced, Padilla. Labor compliance programs: approved private entity: remedies.

Existing law requires an awarding body, as defined, that chooses to use funds derived under specified bond acts for a public works project to either initiate and enforce, or to contract with a 3rd party to initiate and enforce, a labor compliance program, as defined, for that public works project.

This bill would authorize an awarding body to sue for specified damages in superior court if an approved private entity, as defined, that contracted with the awarding body to initiate and enforce a labor compliance program for a public works project either intentionally or through gross negligence does not competently perform the responsibilities required by statute and state regulations for a labor compliance program. This bill would also authorize an awarding body, aggrieved employee, contractor, or other interested party to file a complaint with the Director of Industrial Relations against an approved private entity for failing to perform these responsibilities, and establish administrative procedures to address these complaints. This bill would also authorize the director, under these administrative procedures, to order the approved private entity to return the fees paid by an awarding body and to revoke the approval of the private entity to initiate and enforce a labor compliance program in the future. This bill would specify that an approved private entity would not be required to pay the same

amounts under both a superior court judgment and under the administrative procedures established by the bill. This bill would specify that these provisions apply only to contracts that are entered into on or after the operative date of the bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1771.11 is added to the Labor Code, to  
2 read:  
3 1771.11. (a) The remedies in this section are available only  
4 against an approved private entity.  
5 (b) If an awarding body can demonstrate by a preponderance  
6 of evidence that an approved private entity, that contracted with  
7 the awarding body to initiate and enforce a labor compliance  
8 program for a public works project, either intentionally or through  
9 gross negligence did not competently perform the responsibilities  
10 required by statute and state regulations for a labor compliance  
11 program, the awarding body may seek either of the following  
12 remedies in superior court:  
13 (1) That the approved private entity shall not be entitled to be  
14 paid its fees due under the contract by the awarding body.  
15 (2) That the approved private entity shall be liable to the  
16 awarding body to return the fees already paid under the contract.  
17 (c) (1) An awarding body, aggrieved employee, a contractor,  
18 or other interested party may file with the director a complaint that  
19 an approved private entity, either intentionally or through gross  
20 negligence, has not competently performed the responsibilities  
21 required by statute and state regulations for a labor compliance  
22 program.  
23 (2) The director shall provide the approved private entity with  
24 notice of the complaint and the opportunity to respond to the  
25 complaint.  
26 (3) If the director determines that the complaint appears to be  
27 meritorious and to involve a material failure by the approved  
28 private entity to perform its responsibilities under statute and state  
29 regulations for a labor compliance program, the director shall hold  
30 an evidentiary hearing and shall issue a written decision regarding

1 the complaint. The director's decision may order either of the  
2 following:

3 (A) That the approved private entity return all or part of its fee  
4 to the awarding body, depending on the seriousness of the violation.

5 (B) A revocation of the approval of the approved private entity  
6 to operate a labor compliance program in the future.

7 (4) An aggrieved party may obtain review of the director's  
8 decision by filing a petition for a writ of mandate to the appropriate  
9 superior court pursuant to Section 1094.5 of the Code of Civil  
10 Procedure within 45 days after service of the decision. If a petition  
11 for writ of mandate is not filed within 45 days after service of the  
12 decision, the director's order shall become final.

13 (5) A certified copy of the director's final order may be filed  
14 by the awarding body in the office of the clerk of the superior court  
15 in any county in which the approved private entity conducts  
16 business. The clerk, immediately upon the filing, shall enter  
17 judgment for the awarding body in the amount shown on the  
18 certified order.

19 (d) The remedies provided by this section do not preclude either  
20 of the following:

21 (1) Other remedies the awarding body may have under the  
22 contract.

23 (2) Other procedures used by the director to revoke the approval  
24 of private entities to operate labor compliance programs for public  
25 works projects.

26 (e) Notwithstanding any other law, an approved private entity  
27 shall not be required to return the same fees under both paragraph  
28 (2) of subdivision (b) and subparagraph (A) of paragraph (3) of  
29 subdivision (c).

30 (f) For purposes of this section, "approved private entity" means  
31 a private entity that is approved by the director to initiate and  
32 enforce a labor compliance program for a public works project.

33 (g) This section is deemed to be part of every contract between  
34 an awarding body and an approved private entity to initiate and  
35 enforce a labor compliance program for a public works project.  
36 This section applies only to contracts for an approved private entity  
37 to initiate and enforce a labor compliance program that are entered  
38 into on and after the operative date of this section.

O